

**Office of the Presiding Officers
Military Commission
March 21, 2006**

SUBJECT: Presiding Officers Memorandum (POM) # 18: 8-5 Conferences.

1. Reference: Paragraph 5, Military Commission Instruction # 8, 16 September 2005.

2. Definition: An 8-5 Conference is an *in camera* conference with counsel for both sides and the Presiding Officer to facilitate the fair, orderly, and expeditious processing of the trial. The Presiding Officer may direct, and counsel may request, that other parties be present.

3. Rules for 8-5 Conferences.

a. At the request of either party or *sua sponte*, the Presiding Officer may direct an 8-5 Conference. These conferences may be in person, telephonic, or a combination thereof. Absent permission from the Presiding Officer not to participate, all counsel will participate in a scheduled 8-5 Conference.

b. 8-5 Conferences may be held, when necessary, before, during, and after trial sessions, and they may be used to inform the PO of anticipated issues and to expeditiously resolve matters on which the parties can agree. No legal issues will be litigated or resolved at an 8-5 conference, although all participants may exchange their various viewpoints on legal matters and references.

c. 8-5 Conferences may also be used to resolve issues such as: scheduling; seating and other courtroom arrangements; the method or manner by which voir dire is to be conducted; procedures involving multiple accused; and continuances. Additionally, they may be used to resolve non-routine or non-administrative issues with the consent of the parties such as: witness availability or the proper wording of orders or instructions, when doing so at the conference will prevent undue delay in the proceedings.

d. A summary of an 8-5 Conference, including any matter resolved or agreed upon, will be entered into the record of proceedings by the Presiding Officer, either orally or in writing at the Presiding Officer's discretion, at or before the next Commission session in the case. Counsel may note any objection, correction, or addition to the summary. Failure to do so will waive any issue as to the summary of the matters addressed at the conference.

e. Participation in an 8-5 Conference will not bar any party from making an objection, motion, argument, or offering evidence on any issue that has been discussed during an 8-5 Conference.

/s/

Peter E. Brownback III
COL, JA, USA
Chief Presiding Officer